

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

ICEBERG INDUSTRIES, LLC,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:10cv755 (GBL/IDD)
v.	)	
	)	
SHAZAM ENTERTAINMENT, LTD.	)	
	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, Iceberg Industries, LLC (“Iceberg”), by counsel, complains of defendant, Shazam Entertainment, Ltd. (“Shazam”), as follows:

**NATURE OF LAWSUIT**

1. This is a suit for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1 et seq. This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. § 1338(a).

**PARTIES AND PATENTS**

2. Iceberg is a company organized and existing under the laws of the Commonwealth of Virginia with a principal place of business at 3545 Chain Bridge Road, Fairfax, Virginia 22030. Iceberg is in the business of developing automatic signal recognition and media recognition technology. Its principals, Stephen Kenyon and Laura Simkins, have been developing automatic signal recognition technology for over 30 years, and have been developing media identification technology for over 25 years.

3. Iceberg owns all right, title and interest in and has standing to sue for infringement of United States Patent No. 7,174,293 (“the ‘293 patent”) entitled “Audio Identification System and Method” which issued on February 6, 2007. A copy of the ‘293 patent is attached as Exhibit A and is incorporated herein by reference.

4. Iceberg also owns all right, title and interest in and has standing to sue for infringement of United States Patent No. 7,783,489 (“the ‘489 patent”) entitled “Audio Identification System and Method” which issued on August 24, 2010. The ‘489 patent was based on a continuation of the ‘293 patent application. A copy of the ‘489 patent is attached as Exhibit B and is incorporated herein by reference.

5. Shazam is a corporation organized under the law of England with a registered U.S. address for the purposes of service of process of 416 Cambridge Avenue, Suite 11, Palo Alto, California 94306-1608. Shazam has committed acts of infringement in this judicial district and does regular business in this judicial district, including providing the products and services accused of infringement in this judicial district.

6. This Court has personal jurisdiction over Shazam by virtue of its tortious acts of patent infringement which have been committed in the Commonwealth of Virginia and in this judicial district, and by virtue of Shazam’s regular and systematic transaction of business in the Commonwealth of Virginia.

### **VENUE**

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(d) and 1400(b).

**SHAZAM'S ACTS OF PATENT INFRINGEMENT**

8. Shazam has infringed one or more claims of the '293 patent (including but not limited to claims 65-68 and 113-115), by, among other activities, hosting, providing, using, selling, offering for sale and/or importing music recognition products and services that employ the inventions of the claims of the '293 patent. Shazam has also contributed to and induced infringement by others (such as its customers, users, resellers, wireless service providers and business partners in this judicial district and throughout the United States) by willfully and intentionally aiding, assisting and encouraging their infringement.

9. Shazam has infringed one or more claims of the '489 patent (including but not limited to claims 5, 6 and 7), by, among other activities, hosting, providing, using, selling, offering for sale and/or importing music recognition products and services that employ the inventions of the claims of the '489 patent. Shazam has also contributed to and induced infringement by others (such as its customers, users, resellers, wireless service providers and business partners in this judicial district and throughout the United States) by willfully and intentionally aiding, assisting and encouraging their infringement.

10. Shazam's infringement has injured Iceberg, and Iceberg is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

11. Shazam's infringement has injured and will continue to injure Iceberg, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further use, offers for sale and/or sale of Iceberg's technologies that fall within the scope of the claims of the '293 patent and/or the '489 patent.

12. Iceberg has fully complied with all applicable provisions of 35 U.S.C. § 287.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Iceberg, asks this Court to enter judgment against Shazam and against its respective subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

A. An award of damages adequate to compensate Iceberg for the infringement that has occurred, together with prejudgment interest from the date infringement of the '293 patent began;

B. An award of damages adequate to compensate Iceberg for the infringement that has occurred, together with prejudgment interest from the date infringement of the '489 patent began;

C. An award to Iceberg of all remedies available under 35 U.S.C. §§ 284 and 285;

D. A permanent injunction prohibiting further infringement of the '293 patent;

E. A permanent injunction prohibiting further infringement of the '489 patent; and,

F. Such other and further relief as this Court or a jury may deem proper and just.

**JURY DEMAND**

Iceberg demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: September 27, 2010

/s/ \_\_\_\_\_  
Amy Sanborn Owen (#27692)  
[aowen@cochranowen.com](mailto:aowen@cochranowen.com)  
Ben Selan (#65923)  
[bselan@cochranowen.com](mailto:bselan@cochranowen.com)  
COCHRAN & OWEN, LLC  
8000 Towers Crescent Drive, Suite 160  
Vienna, VA 22182  
Ph: (703) 847-4480  
Fax: (703) 847-4499

Counsel for Iceberg Industries, LLC

Of counsel:

David J. Sheikh  
[sheikh@nshn.com](mailto:sheikh@nshn.com)  
Dina M. Hayes  
[hayes@nshn.com](mailto:hayes@nshn.com)  
Anna Folgers  
[afolgers@nshn.com](mailto:afolgers@nshn.com)  
Niro, Haller & Niro, Ltd.  
181 West Madison Street, Suite 4600  
Chicago, Illinois 60602-4515  
Ph: (312) 236-0733  
Fax: (312) 236-3137

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **FIRST AMENDED COMPLAINT** was served by electronic mail and overnight mail and filed with the Clerk of Court using the CM/ECF system, on this 27th day of September, 2010, upon:

Brian Ankenbrandt  
GIBSON, DUNN & CRUTCHER LLP  
1801 California Street  
Suite 4200  
Denver, CO 80202  
Telephone: (303) 298-5923  
Facsimile: (303) 313-2843  
[bankenbrandt@gibsondunn.com](mailto:bankenbrandt@gibsondunn.com)

Josh Krevitt  
Benjamin Hershkowitz  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, NY 10166-0193  
Telephone: (212) 351-2410  
Facsimile: (212) 351-6210  
[jkrevitt@gibsondunn.com](mailto:jkrevitt@gibsondunn.com)  
[bhershkowitz@gibsondunn.com](mailto:bhershkowitz@gibsondunn.com)

/s/  
\_\_\_\_\_  
Amy Sanborn Owen (#27692)  
[aowen@cochranowen.com](mailto:aowen@cochranowen.com)  
Ben Selan (#65923)  
[bselan@cochranowen.com](mailto:bselan@cochranowen.com)  
COCHRAN & OWEN, LLC  
8000 Towers Crescent Drive, Suite 160  
Vienna, VA 22182  
Ph: (703) 847-4480  
Fax: (703) 847-4499

Counsel for Iceberg Industries, LLC